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Leland James Weishuegel

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Section IV:
AMENDMENT UNDER 37 CFR §1.121
REMARKS

Objections to the Specification

In the Office Action, the examiner has objected to the Cross Reference to Related Applications and Incorporation by Reference statements for missing US application serial numbers. The amendment herein remedies this missing information.

Also in the Office action, the examiner has objected to a grammatical error in the specification which has been corrected by the present amendment.

Rejections under 35 U.S.C. §102

In the Office Action, the examiner has rejected the following claims for lack of novelty as being anticipated by U.S. Patents as follows:

- (a) claims 1 - 15 under 35 U.S.C. §102(b) as being anticipated by US Pat. No. 5,303,379 to Khoyi;
- (b) claims 1, 2, 4 - 7, 9 - 12, 14 and 15 under 35 U.S.C. §102(b) as being anticipated by US Pat. No. 5,117,354 to Long; and
- (c) claims 1 - 15 under 35 U.S.C. §102(e) as being anticipated by published US Patent Application 2002/0082953 to Batham.

The Khoyi patent is related to programming technologies for providing dynamic links between program and data objects, and not specifically to creating lists of items for sale through an online auction system in which a trader must intervene to create the list, authorize it and promote it to the auction.

The Long patent is related to producing orders for lists of items which are to be purchased

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(not offered) from a manufacturer, and more specifically for a system which creates these orders in an email system (not in an online auction system).

The Batham patent application was filed on Jan. 31, 2002, and has been afforded prior art status by the examiner apparently because of its priority to one or more provisional patent applications, namely no. 60/266,076 filed on 1/31/2001, and no. 60/200,477 filed on 4/28/2000. Applicant respectfully traverses this rejection for being based upon art which does not qualify as prior art, and for being characterized as a "patent" (page 6, lines 4 -5) prior to it being allowed and issued as an actual patent. If examiner is affording a critical date to the Batham non-provisional patent application according to the 60/266,076 provisional application, then applicant requests examiner to establish for the record where in the provisional application the cited disclosure is found. Additionally, the 60/266,076 provisional application does not precede our application in filing, but instead was filed on the same date.

If the examiner is affording a critical date to the Batham non-provisional patent application according to the 60/200,477 provisional patent application, applicant requests this rejection be withdrawn as the Batham non-provisional patent application is not entitled to priority to a provisional patent application filed greater than 12 months before the filing date of the non-provisional patent application.

If the current rejection over the Batham patent application is maintained, or a new rejection is issued which relies in part on the Batham patent application, applicant respectfully requests that the action not be made final, that it be established for the record which provisional application is considered to give Batham a critical reference date *before* our effective filing date, and to be provided a copy of that provisional patent application such that support for the relied-upon disclosure can be found and analyzed.

However, we believe that the present amendment to the claims presents elements and limitations not disclosed by Batham, Long or Khoyi, as they are not drawn to subject matter relating to online auctions and do not provide elements necessary for traders to prepare auction lists and promote them to an auction status. The terms "catalog" and "link" have been interpreted to employ alternate definitions and functionality than that set forth in our disclosure. The present amendment clarifies our claimed invention with respect to these terms and the cited art, and places the claims in a clearly distinct state compared to these cited disclosures. As such, applicant requests reconsideration of all rejections in view of the present amendment.

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1. The cited references do not properly anticipate the claimed invention, as they fail to disclose all the claimed steps, elements or limitations. MPEP 2131 states:

TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH
EVERY ELEMENT OF THE CLAIM (*capitalization emphasis found
in original text*)

Because the facts of the case as set forth below indicate that the cited reference does not properly teach all the steps, element or limitation of the claim, the rejection should be withdrawn. None of the references teach:

- (i) a system for providing a dynamic online listing of information regarding items available for purchase or bid through an online auction system;
- (ii) trader-initiated synchronizer which updates links to descriptive data items adapted to replace links to older data items with links to newer data items, and adapted to add links to data items which were not previously available;
- (iii) an offer promoter for promoting synchronized offer listings to an online auction system responsive to authorization of said trader; and
- (iv) a user interface to an online auction system (e.g. an Interactive Offer System).

Conclusion

It has been established that the rejections are not supported by the cited art in view of the present amendment. The examiner's objections have been considered, and have been accommodated by the amendment made herein. Reconsideration of all rejections is hereby requested.

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